

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

American Electric Power Service
Corporation, American Transmission
Systems Incorporated, Dayton Power and
Light Company, Duke Energy Business
Services LLC, Duke Energy Kentucky, Inc.,
Duke Energy Ohio, Inc., Jersey Central
Power & Light Company, Keystone
Appalachian Transmission Company, Mid-
Atlantic Interstate Transmission LLC,
Monongahela Power Company, PPL
Electric Utilities Corporation, The Potomac
Edison Company, Trans-Allegheny
Interstate Line Company, and Virginia
Electric and Power Company d/b/a
Dominion Energy Virginia,

No. 24-1361

Petitioners,

v.

Federal Energy Regulatory
Commission,

Respondent.

NON-BINDING STATEMENT OF ISSUES

In accordance with this Court's procedural order dated November 26, 2024, Petitioners, as listed in the caption,¹ respectfully submit the

¹ Petitioners are Transmission Owners operating in the footprint of PJM Interconnection, L.L.C. (PJM).

following preliminary, non-binding statement of issues presented for review:

- 1) Whether the Federal Energy Regulatory Commission (FERC) acted in an arbitrary and capricious manner when it determined that Petitioners are required to execute Designated Entity Agreements (DEAs) containing “appropriate terms and conditions” (*i.e.*, “partial” DEAs) even in situations where FERC found that comparability and other factors do not require security commitments.
- 2) Whether FERC’s determination to require partial DEAs was an abuse of discretion and unsupported by substantial evidence in that it, among other things, failed to consider and account for the rights and obligations set forth in the Consolidated Transmission Owners Agreement (CTOA), as well as the substantial evidence provided by Petitioners and PJM regarding the costs and burdens of administering DEAs. *See, e.g., Am. Mun. Power Inc. v. FERC*, 86 F.4th 922, 931 (D.C. Cir. 2023) (stating FERC must demonstrate that it has undertaken reasoned decisionmaking based on substantial evidence in the record).
- 3) Whether FERC’s determination that Petitioners are required to execute DEAs for projects that are not selected for inclusion in PJM’s Regional Transmission Expansion Planning (RTEP) process for purposes of regional cost allocation was arbitrary, capricious, and an abuse of discretion, given the lack of rationale provided for imposing any DEA requirements on Petitioners for such projects, which are already governed by Petitioners’ contractual obligations to construct RTEP Projects under the CTOA. *See, e.g., Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) (“We have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner[.]”).

- 4) Whether FERC acted in an arbitrary and capricious manner and in abuse of its discretion in interpreting the existing DEA requirements in the PJM Operating Agreement, including (1) failing to recognize and appropriately account for the fact that the term “Designated Entity” is used imprecisely and inconsistently throughout the PJM Operating Agreement and (2) relying on the false premise that PJM’s FERC Order No. 1000 compliance filing deliberately exceeded the requirements of Order No. 1000 with respect to the scope of application of DEAs. *See, e.g., Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 43 (explaining that an agency must examine the relevant data before it and articulate a satisfactory explanation for its action).

Respectfully submitted,

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² Petitioners American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission LLC, Monongahela Power Company, The Potomac Edison Company, and Trans-Allegheny Interstate Line Company are collectively the “FirstEnergy Transmission Companies.”

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³ Petitioners Duke Energy Business Services LLC (“DEBS”), Duke Energy Kentucky, Inc. (“DEK”), and Duke Energy Ohio, Inc. (“DEO”) are collectively “Duke Energy.”

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2024, I caused a true and correct copy of the foregoing Statement of Issues to be served on all parties via the Court's CM/ECF system.

Respectfully submitted,

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